

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: A.H.

ODR #15132 / 13-14-KE

Date of Birth:
[redacted]

Date of Hearing:
August 11, 2014

CLOSED HEARING

Parties to the Hearing:
Parent[s]

Representative:
Pro Se

Propel Charter School
3447 East Carson Street Suite 200
Pittsburgh, PA 15203

Jordan Strassburger, Esquire
Four Gateway Center Suite 2200
444 Liberty Avenue
Pittsburgh, PA 15222

Date Record Closed:

August 26, 2014

Date of Decision:

September 2, 2014

Hearing Officer:

Linda M. Valentini, Psy.D., CHO
Certified Hearing Official

Background

Student¹ is an early teen-aged student who has just graduated from 8th grade at the Charter School [hereinafter School²] and is eligible for special education under the classifications of specific learning disability in written expression and other health impairment due to Attention Deficit Hyperactivity Disorder.

Student's Parent requested this hearing, alleging that the School denied Student a free appropriate public education [FAPE] for the 2013-2014 school year³ by failing to provide Student with accommodations following a concussion sustained in early September 2013, failing to address a bullying issue, and failing to provide a positive behavior support plan [PBSP]. The School maintains that it has at all times provided FAPE to Student in that it did accommodate Student's post-concussion status, it did address the bullying issue and Student's behaviors in school did not warrant a formal PBSP.

At the outset of the hearing the School challenged the Parent's standing. Having determined that although Student had been placed in the physical custody of the children and youth agency the Parent's rights had not been terminated, the hearing officer ruled against the School on this issue and the matter proceeded as scheduled. [NT 14-17]

The Parent, proceeding pro se, was sworn in prior to giving the opening statement so that information in the opening statement would not have to be repeated.

Issue

1. Did the School fail to provide Student with FAPE during the 2013-2014 school year in the areas of post-concussion accommodations, addressing a bullying issue, and providing positive behavior support?
2. If the School failed to provide Student with FAPE in any or all these areas what is the remedy?

¹ This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

² Although the Charter School has several locations, and Student attended more than one location in previous years, the LEA is here referenced only as "the School".

³ Although the Parent limited her complaint to the period from January 2014 through to the end of the school year in June, this decision addresses the entire school year as events earlier in the year impacted later events.

Findings of Fact⁴

Background

1. Student received early intervention services prior to kindergarten entrance, and in 1st grade was evaluated and resumed receiving special education services. [NT 19; S-1]
2. Student was first enrolled in the School in 2nd grade, but in the middle of 3rd grade moved to another state to live with Student's father. At the end of 5th grade Student returned to mother and reenrolled in the School and remained there for the first third of 6th grade. [S-1]
3. Student was suspended from the School on October 28, 2011 because of an incident of threatening a peer [redacted] and placed in an Alternative Educational Setting from November 3, 2011 to March 8, 2012 after which Student was enrolled in a local school district to finish out 6th grade. Student moved back with father in the other state for 7th grade. [S-1]
4. Following a reevaluation in 7th grade, Student was deemed to be no longer eligible under the [Other State's] Guidelines for Special Education, and special education entitlement in that State ended as of November 19, 2012. [S-1]
5. Student returned to mother in Pennsylvania in September 2013 and again re-enrolled in the School for the 2013-2014 school year, Student's 8th grade year. [S-1]
6. Student suffered a concussion in early September 2013. Although the School and the Parent planned an evaluation, according to the concussion discharge instructions there was to be no significant classroom or standardized testing so the evaluation was delayed. [NT 18, NT 61-62; HO-1]
7. The District completed an evaluation of Student and the Evaluation Report [ER] was dated November 8, 2013. [S-1]
8. As noted in the ER, Student's summary score on standardized cognitive testing has increased over the years as follows: 1st grade 77 [Borderline], 2nd grade 87 [Low Average], 3rd grade 99 [Average], 7th grade 113 [Above Average]. [NT 63; S-1]
9. As noted in the ER, Student's Measures of Academic Progress [MAP] scores in reading and math also increased. In fall of 3rd grade reading was at the 35th

⁴ There is a significant error on the transcript. Page 54-55 should read: [Parent] "So it's ADHD, NOS, impulsivity, general anxiety disorder, dysthymic disorder which is a severe depression." [Hearing Officer] "Severe depression? ... Dysthymia is kind of a low-level condition that doesn't go away. It's not a major depressive disorder."

- percentile and math was at the 46th percentile. By fall of 7th grade reading was at the 70th percentile and math was at the 61st percentile.⁵ [S-1]
10. Achievement testing completed in November 2013 found academic skills in reading and math congruent with cognitive ability. Student received an Above Average standard score in Pseudoword Decoding and Average standard scores in Word Reading, Reading Comprehension, Basic Reading, Numerical Operations and Sentence Combining. [S-1]
 11. In contrast to reading and math, other than the Sentence Combining score, Student's scores obtained in November 2013 on written expression subtests - Word Count, Theme Development, Grammar and Mechanics, Essay Composition and Sentence Building - were Borderline to Low Average. [S-1]
 12. The Evaluation Report [ER] concluded that Student has a specific learning disability in the area of written language. [NT 63-64; S-1]
 13. Student received a Neuropsychological Evaluation from Children's Hospital of Pittsburgh in April 2014 and the School's psychologist reviewed this report at the time of a parentally-requested reevaluation which was completed by the School at the end of the 2013-2014 school year. The Reevaluation Report [RR] is dated June 20, 2014. [NT 68-69; S-3, S-4]
 14. At the time of the neuropsychological evaluation Student was prescribed Lexapro, Vyvanse and Trazadone. The School's RR of June 20, 2014 notes that when the FBA was completed Student was on medications to address ADHD and anxiety. [S-4]
 15. Based on the information from the Neuropsychological Evaluation the School added Other Health Impairment [OHI] based on ADHD as a secondary disability to Student's classification. [NT 67-68; S-3]
 16. The School's psychologist considered the classification of Emotional Disturbance in light of the available information, including Student's presentation in the school environment, and concluded that Student did not meet the IDEA criteria for this classification.⁶ [NT 81-83]

⁵ A **percentile** ranking shows where an individual falls relative to others in the group such that, for example a person at the 50th percentile which is dead average performed better than 49 percent of others. This statistic is not to be confused with the concept of **percent**.

⁶ Considering the series of significant events external to school that Student endured in the relevant period, and Student's few behavioral events in the school setting during that period, this hearing officer concurs with the School psychologist's conclusion.

Concussion

17. On September 7, 2013 Student suffered a concussion from a head-to-head impact during a sports event and was seen and diagnosed at Children's Hospital of Pittsburgh. [NT 11-12; S-3, HO-1, HO-C pp 1, 2⁷]
18. The Hospital provided Parent with information about post-concussion care and the Parent provided this to the School. [NT 12, 21; HO-1, HO-C pp 3, 10, 11]
19. Student experienced acute dizziness, blurred vision, confusion and poor balance; Student returned to the ER two weeks later due to neck pain. Student continued to experience symptoms at least through October 2013.⁸ [S-3]
20. The Parent and the School staff communicated back and forth about how Student was doing in reference to the concussion as well as in reference to any reactions to a change in medication. [HO-C pp 4, 5, 6, 7, 8, 9, 12, 21]
21. The Parent and the teachers communicated frequently by email about any missing assignments or schoolwork difficulty starting on September 18th and continuing throughout the year. [HO-A pp 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 40, 41, 44, 45, 46]
22. The teacher informed the Parent about accommodations for Student in light of the concussion including removing Student from a hip-hop dance/music class, providing a hard copy of a map rather than have Student use the computer, adapting an assignment, decreasing the amount of math problems in an assignment, taking a test in a quiet room with one other pupil and a teacher, provision of a study guide that was very close to the actual test, giving a rest as needed, extended time for an assignment, decreased number of video clips to watch for an assignment, and giving second chances on homework. [NT 98-99; HO-A pp 3, 7, 12, 15, 20, 32, 33, 34, 35, 36]
23. Throughout the school year Student had fairly unrestricted access to the guidance counselor and Student's teachers were available for support if the counselor were unavailable. [NT 102-103, 108-109]

Bullying

24. On September 17, 2013 Student reported to the Parent that a peer was picking on Student and the Parent reported this to the School. [HO-B p 1]

⁷ HO-2 consisted of emails regarding Student. The hearing officer used only those exchanges that were relevant to the issues identified, and sorted the correspondence into 4 separate sets marked by topic as follows: HO-A (Assignments); HO-B (Bullying); HO-C (Concussion); and HO-D (Demeanor/Discipline). Rather than being referenced as HO-2, therefore, in this decision these documents will be referenced by category A, B, C, or D followed by page numbers. [NT 44-46]

⁸ As of a check-up at the end of April 2014 Student had shown improvement on the ImPACT test. [S-3]

25. The School was aware of the incident because Student had written a note to the teacher about it. [HO-B p 1]
26. The teacher brought the concern to the attention of the principal and in the meanwhile changed Student's seat. [HO-B p 1, 2]
27. On September 18, 2013 first thing in the morning the principal spoke with the peer and then with Student and the peer together. The principal informed them that he and the counselor would conduct a mediation with them. [HO-B p 2]
28. Later that day, although the principal could not meet, the counselor went to get Student for the mediation but Student indicated that Student was expecting the principal and would not leave with the counselor. The teacher reported this to the Parent who then communicated about it to the principal. [HO-B p 2, 3, 4]
29. On September 19, 2013 the principal and the counselor conducted a mediation with the Student and the peer. There appeared to be a positive outcome. [NT 95; HO-B p 2]
30. On September 25, 2013 there was an incident [involving] the peer [redacted]. The Parent communicated about this to the principal; Student had communicated about it to a staff member. [NT 96; HO-B p 5]
31. Although the Parent wanted to meet with the peer's parents, the principal wanted to meet with them privately first. The principal indicated that the best short term solution would be to arrange that Student and the peer not be in the same classes and indicated he would "make that adjustment soon". [HO-B p 5]
32. On October 11, 2013 the Parent notified the principal that Student was complaining about continued "picking" – touching, name calling, making smart remarks and name calling – and that Student was finding it difficult to manage anger and frustration. [HO-B p 6]
33. On or about October 11, 2013 the peer's classes were switched. [HO-B p 6]
34. No further incidents of conflict between Student and the peer were reported to the School by the Parent until an incident in April when the Student and the peer were in the same classroom for one day because a number of children were on an incentive field trip. [NT 95-97]

Discipline/Behavior

35. On October 14, 2013 there was an incident for which Student was assigned a Discipline Referral for inappropriate language [the F-word] /degrading language [the N-word]. Student was required to serve a Disciplinary Action for three days. [NT 99-100; S-7, HO-D pp 1, 3, 4, 5]

36. Because the School takes inappropriate/degrading language very seriously, there is a *minimum* 3-day suspension that is imposed. Student received the minimum and was reinstated immediately afterwards. [NT 99-100]
37. On October 21, 2013 the counselor informed the Parent that Student had “a little meltdown” in creative arts dance class when the teacher raised his voice to Student after Student had screamed loudly for the class to be quiet. Student went to the counselor, they talked it through and the teacher and Student then spoke. No disciplinary referral was made. [HO-D pp 9]
38. On October 25, 2013 the counselor informed the Parent that Student had “an amazing week”, had checked in daily, was working “extremely hard” and was observed to be smiling and seemed happy in class and in the hallway. [HO-D p 10]
39. The Parent checked in with the School on October 29, 30 and November 5th to see how Student was doing. Student was doing well according to all staff who responded. Responses were that Student was “fine”, that “all was well”, that Student was “having good behavior”, was “always well-behaved” and was not disruptive or disrespectful. [HO-D pp 11, 12, 13, 14]
40. On November 6, 2013 the counselor let the Parent know that Student had made friends with a same-grade peer and that it seemed to be a “good friendship for [Student]”. [HO-D p 13]
41. The Parent requested that the principal write a letter about what the School’s “experience has been with me as a parent”. The principal issued a letter To Whom It May Concern on November 11, 2013 noting that Parent was very proactive in attempts to help Student both academically and socially. [HO-D pp 15, 16]
42. On November 15, 2013 Student told a Caucasian peer to “[redacted]”. The teacher spoke with Student; no disciplinary referral was made. The teacher informed the Parent of the incident on November 18, 2013. [HO-D p 17]
43. Student’s November 2013 reevaluation utilized the Behavior Assessment Rating Scale for Children – 2nd Edition [BASC-2].⁹ Student’s self-report yielded at-risk scores for anxiety, depression, hyperactivity, relations with parents and self-reliance, and one clinically significant score for attention problems. [S-1]
44. The Parent’s BASC-2 ratings yielded clinically significant scores in hyperactivity, conduct problems, atypicality, withdrawal, attention problems, and anxiety; at-

⁹ Unfortunately the instrument was given only to Student and the Parent. Teachers’ ratings were not obtained. [NT 80, 85] While this is a flaw in the otherwise comprehensive evaluation, it is not a fatal flaw because as of early November 2013 when the ER was issued there were only two minor behavior incidents reported and teachers’ ratings were unlikely to have yielded clinically significant scores.

- risk scores were in the areas of depression, adaptability, and activities of daily living. [S-1]
45. The ER noted that the problem behaviors the Parent was experiencing at home with Student were not observed directly within the school setting, although at one point Student “refused to leave school and mental health and support staff were required to intervene”. [NT 28-29; S-1, P-1¹⁰]
 46. An IEP was created on December 3, 2013. At that time the Parent did not put forth any concerns about Student’s behavior in school and the teachers also did not report any behaviors of concern. [NT 47, 65; S-2]
 47. The Parent enrolled Student in a partial hospitalization program on December 12, 2013¹¹. Student returned to the School on January 6, 2014. [NT 13, 29; S-3]
 48. On January 13, 2014 the teacher told the Parent that Student “has been working very hard” since returning to classes. Reportedly Student took the initiative to inquire about missed work and turned it all in on time. [HO-D p 18]
 49. On January 13, 2014 the Parent requested that someone from the School send a letter of recommendation for Student’s admission to a school. On January 15, 2014 the counselor forwarded the letter in which she described Student as having shown “tremendous growth and maturity” since the beginning of the school year. She described Student as “bright”, “likeable”, “friendly”, and “focused” despite having endured “a great number of very difficult situations in [Student’s] personal and family life earlier in the school year”. [HO-D p 18 19, 20]
 50. On February 26, 2014 the teacher noted to the Parent that Student had been “talking a LOT during class”, that this was addressed with Student, and that a change of seats was contemplated. The Parent noted that this was an indication that Student was “happy and comfortable” and asked that the seat change wait until Parent had a chance to speak with Student about the talking. [HO-D pp 21, 22]
 51. On March 16, 2014 the teacher asked the Parent if they could have a conference about some behaviors – searching for game images on the computer instead of working, rushing through assignments and not making requested corrections, becoming defensive and shutting down when corrected, and on one occasion storming out of the room. [HO-D pp 23, 24]

¹⁰ P-1 is the police report about the refusal incident. The Parent submitted it by email after the hearing and the hearing officer admitted it into evidence. It is not referenced in the transcript as an exhibit.

¹¹ There is no evidence in the record that this placement was related to any behaviors Student was exhibiting in school. The Parent asserted that she made the decision “after a couple of other suspensions” but Student had only received one suspension as of December 2013. [NT 29]

52. The Parent responded that Parent was not available for a meeting but needed to come to the School for three or four days to observe, intervene and give feedback. Parent did come to the school and observe. [HO-D pp 23, 24, 25, 28]
53. On March 19, 2014 Student was assigned a Discipline Referral for physical aggression [smacking a peer in the back of the head] and was required to serve a Disciplinary Action for one day. [NT 100; HO-D pp 26, 27]
54. On March 24, 2014 Student again “smacked” a student in the back of the head. The other student indicated this behavior had been ongoing. The principal informed the Parent, and invited the Parent to be present when he spoke with Student. The Parent believed that Student was getting picked on. [HO-D p 29]
55. In April 2014 the Parent requested that Student have a Positive Behavior Support Plan [PBSP] and when informed that there was a process for developing one, on April 11, 2014 the Parent requested a Functional Behavioral Assessment “based on scores from the original evaluation and past history and current of [sic] certain behaviors”. [NT 48, 88-91; HO-A p 39, S-6]
56. A Permission to Reevaluate was executed by the Parent on April 15, 2014 and received by the School on April 22, 2014. [S-6]
57. In the meantime the School made some IEP revisions in consideration of the Parent’s concerns – changing weekly binder checks to daily and purchasing a formal social skills instruction program to use with Student. [NT 88-89]
58. The requested reevaluation was completed using review of records including the parentally-obtained Neuropsychological Evaluation from April 2014, teacher/parent/self BASC-2 rating scales and classroom observation. [NT 66-67; S-3]
59. The Reevaluation Report [RR] was issued on June 20, 2014. [S-3]
60. A Functional Behavioral Assessment was completed for the parentally-requested June 2014 RR. The FBA notes that Student was “extremely social with peers [and] able to accept redirection from teachers and staff”. Student was “able to work on independent tasks with minimal redirection” [but] did “have difficulty with off-task behaviors and organizational skills”. [S-3]
61. Regarding off-task behaviors, the FBA noted that when a topic is of high interest Student was noted to be motivated and productive. Student tended to demonstrate lack of motivation and off-task behaviors when Student was uninterested in the task, was focused on a different topic or item, and/or when Student had rushed through an assignment and finished early. [S-3]

62. The School addressed Student's off-task behaviors through Student participating in a social skills group, taking five-minute breaks upon request, and class incentive points. Unfinished work is sent home if not completed in time during the school day and Student does not earn the weekly incentive for this target area if Student scores below 80% for the week. [S-3]
63. The Parent and the teacher communicated by email throughout the year about organization and at the time of the IEP meeting in December 2013 the Parent expressed continuing concern about Student's difficulty with organization. Steps the School took to improve Student's organization included providing an accordion folder, providing notebooks for journals, checking Student's folder before leaving school, providing a new binder to replace other organization systems to streamline organization, providing a self-monitoring checklist, implementing a weekly binder check and working with Student to clear out Student's folder/binder. [S-3; HO-A pp 2, 5, 14, 16, 24, 42]
64. An IEP revision dated April 7, 2014 provided that staff would check Student's binder daily at the end of the day to ensure Student is taking home the required materials with the goal of increasing weekly organization average from 50% to 90% accuracy across 3 out of 4 weeks. Student's binder checks from April 7, 2014 through May 2, 2014 were as follows: Week 1: 75%; Week 2: 75%; Week 3: 90%; Week 4: 92%. An incentive on the last day of each week when Student had an average of 80% accuracy was provided. [S-3]
65. The BASC-2 was utilized for the June 2014 reevaluation. Based on self-report, all Student's scores were normal with the exception of an at-risk score on attention problems. [S-3]
66. Only one area of the Parent's June 2014 BASC-2 ratings was normal – social skills. [S-3]
67. Scores on the Parent's and the teacher's June 2014 BASC-2 ratings differed considerably, with the Parent's reports yielding nine clinically significant scores and the teacher's reports yielding no clinically significant scores. On only two areas, hyperactivity and social skills, did the Parent's and the teacher's scores match, both scoring Student as at-risk on the former and normal on the latter. On all other areas the Parent's scores were higher than the teacher's scores. [S-3]
68. On April 30, 2014 Student committed a violation of the dress code. Student was not assigned a Disciplinary Action. [S-7, HO-D p 30, 31]
69. On June 2, 2014 Student committed a violation of the Code of Conduct [redacted] and was assigned a Disciplinary Action for three days.¹² [NT 100; S-7, HO-D p 32, 33]

¹² The record is unclear as to the exact date but toward the end of the school year, perhaps in June, Student was placed outside the home.

70. On June 20, 2014 Student committed a violation of the Code of Conduct for physical aggression and degrading language. Presumably because it was the end of the school year Student was not assigned a Disciplinary Action. [HO-D pp 34, 35, 36]
71. Student received a total of seven days of out-of-school suspension in the 2013-2014 school year. The first suspension was on October 14, 2013 [3 days] and there were no further suspensions until another in March 2014 [1 day] and a final one [3 days] in June 2014. [NT 100; S-7]
72. After being in his position at the School for two full years, the principal judges three such incidents from an 8th grade student not to be out of the ordinary. [NT 94-95, 102]
73. Significant events external to the School environment that took place during the 2013-2014 school year were as follows: In September Student was newly returned to the physical custody of mother in Pennsylvania after a year with father in another state; in September Student suffered a concussion; in November Student was anticipating attending a court date in the other state addressing parental custody; in December Student was parentally placed in a partial hospitalization program; in or about June Student was placed in the care of Children and Youth Services. [NT 13, 18-20, 29, 43; HO-A p 21]
74. Student's final grades for the 2013-2014 school year were Language Arts C, Algebra B, Social Studies C, Science B, Music A, Creative Arts A. [NT 103-104; S-8]

Legal Basis

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012). In this case the Parent asked for the hearing and thus bore the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and

conclusions of law. Hearing officers have the plenary responsibility to make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses”. *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); *see also generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014).

As required of me in my role as the finder of fact I make the following credibility determinations in this matter. I found the testimony of the School’s witnesses to be credible and, although I relied heavily on documentary evidence, I gave due weight to testimony provided by the School staff. I found the Parent to be a committed advocate for her child and her concern for Student was consistent, persistent and admirable. She initiated many of the communications with the School and was diligent and cooperative in following through with what was needed at home to help Student organize assignments. For its part the School reciprocated and there appeared to be a cordial working relationship between home and school. For reasons not entirely clear in the record there seems to have been an unfortunate shift in the relationship between the School and the Parent in or around mid-March 2014. It seems that Student was displaying behaviors at home that were not evident in school and the record notes that around the end of the school year Student was placed in the physical custody of the county children and youth agency. This developing situation and the stress it brought must have been very hard for the Parent and this may have affected her relationship with the School. Indeed, in contrast to maintaining a cooperative stance toward the School throughout most of the school year, the Parent’s view of the School as conveyed through her testimony at the hearing was generally critical. Although this is a not uncommon stance of parents in a due process hearing, in crucial aspects her testimony [NT 21-28] about how the School handled post-concussion activities was not congruent with documentary evidence. In her frank and frequent emails to the School there was virtually no correspondence indicating that Student was complaining of being on the computer longer than allowed, not receiving extra time to complete tasks and/or not being offered rest breaks. I am certain that this highly involved Parent would not have hesitated to bring concerns about post-concussion care to the School’s attention and there is no record that she did or needed to. Likewise, related to the bullying issue, there is no record of mother expressing any further concerns about bullying after October 11, 2013 until the spring when Student was involved in a disciplinary incident when unfortunately Student and the identified peer were together in a combined classroom for one day when other peers were on a trip [NT 33, 36]. Finally, the parent testified that she based her belief that Student should have had a positive behavior support plan on Student’s disciplinary record and the many emails she had received about behavior. In fact Student received only three disciplinary actions totaling 7 days and had only two other incidents [the meltdown in creative arts and the storming out of the room when confronted about a task]; the email correspondence simply does not support the Parent’s recollections [NT 40, 49-50]. Given these discrepancies I must accord the Parent’s testimony less weight.

Charter Schools: The Individuals with Disabilities Education Act (IDEA) requires states to provide a "free appropriate public education" to all students who qualify for special education services. Pennsylvania implements IDEA by way of 22 Pa. Code Chapter 14. However, under the enabling Act 22 of June 12, 1997 Pennsylvania charter schools were to be autonomous "independent public schools" free from certain regulations. Thus Pennsylvania charter schools had an exemption from the special education aspects of 22 Pa. Code Chapter 14 and were simply required to comply with federal law. Accordingly, from June 12, 1997, to June 8, 2001, Pennsylvania charter schools were governed in the area of special education under the Federal Laws. On June 8, 2001, the Charter School Services and Programs for Children with Disabilities Law,¹ was adopted and became effective on June 9, 2001 to specify how the Commonwealth of Pennsylvania would meet its obligations to ensure that charter schools comply with the IDEA and its implementing regulations.¹ Effective June 9, 2001, 22 Pa. Code §711.1 et seq., along with federal regulations, governs special education in Pennsylvania Charter Schools. *See also, R.B. ex rel. Parent v. Mastery Charter Sch.*, 762 F.Supp.2d 745 (E.D.Pa.2010)

Standards for a Free Appropriate Public Education: Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §711.1 *et seq.* and 34 C.F.R. §300.300, *et seq.* a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA). A FAPE is "an educational instruction specially designed . . . to meet the unique needs of a child with a disability, coupled with any additional 'related services' that are 'required to assist a child with a disability to benefit from [that instruction].'" *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982); *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 127 S. Ct. 1994, 167 L. Ed. 2d 904 (2007) (citing 20 U.S.C. § 1401(29)); see also 20 U.S.C. §§ 1401(9), (26)(A). In determining whether an LEA has offered an appropriate program, the proper standard is whether the proposed program is reasonably calculated to confer meaningful educational benefit. *Rowley*. "Meaningful benefit" means that an eligible student's program affords him or her the opportunity for "significant learning." *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3RD Cir. 1999).

However, under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, an LEA is not required to provide an eligible student with services designed to provide the best possible education to maximize educational benefits or to maximize the child's potential. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995). Pennsylvania's Eastern District Court wrote that under the IDEA "schools are held to a minimum baseline standard, a standard that may fails to meet the expectations of the parents of disabled and nondisabled children alike". *Sinan L. et al vs School District of Philadelphia*, 2007 WL 1933021 ([E.D. Pa. 2007). What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

Discussion

The testimony of every witness, and the content of each exhibit, was considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit. The totality of the testimonial and documentary evidence weighs in favor of the School.

First, there is no evidence other than the Parent's testimonial account of Student's nebulous reports that the School did not follow post-concussion guidelines, and there are no emails from this conscientious and concerned Parent documenting any unaddressed concerns in this area.

Second, when the Parent and Student brought the issue of bullying to the School's attention, the principal responded in a measured manner by first employing mediation and then by changing the peer's classes when mediation did not hold up. There was one unfortunate incident in the spring when the School did have Student and the peer in the same class when other children were out on an incentive trip; this should not have happened and the School is cautioned for future situations with other students in similar circumstances. Again, between mid-October and this incident there are no emails from this proactive Parent to the School about any further incidents of bullying.

Third, Student engaged in three isolated behavioral incidents that merited suspension during the year – mid-October, mid-March, and early June¹³ - , only one of which involved physical aggression [smacking a peer on the back of the head]. These incidents individually or taken as a whole do not rise to the level of requiring a PBSP. It is noted that Student had free access to the guidance counselor throughout the school year although this is not written into the IEP. It is further noted that the December 2013 IEP as well as its revision completed in May 2014 provides for a weekly social skills group. There was no evidence put forth by either party as to whether this group was or was not implemented, although there was mention that the School purchased a formal social skills program. It is strongly suggested that if and when an IEP team convenes to revise the IEP based on the June 2014 reevaluation, consideration be given to adding counseling as a supportive service.

Finally, a PBSP is not an appropriate vehicle to address difficulties in task completion and organization. It is sufficiently supported in the record that Student's difficulties with task completion and organization, whether a function of the concussion or ADHD or both combined, were appropriately handled through ongoing Parent/School communication and consultation, one-to-one staff assistance, accommodations, and an incentive system.

Based on the record before me I cannot find in favor of the Parent as she has not met her burden of proof on the issues she presented. The School did not deny Student FAPE in any area. Moreover, to the Student's, the Parent's and the School's credit, Student weathered the vicissitudes of a series of unsettling circumstances external to the school

¹³ On this hearing record, other than the email at HO-D pp 34, 35, 36, there is no description or discussion of the late June incident.

setting and maintained a solid academic record throughout the 8th grade year demonstrating that Student derived meaningful educational benefit.

Order

It is hereby ordered that:

1. The School did not fail to provide Student with FAPE during the 2013-2014 school year in the areas of post-concussion accommodations, addressing a bullying issue, and providing positive behavior support.
2. As the School did not fail to provide Student with FAPE in these areas Student is not entitled to a remedy.

Any claims not specifically addressed by this decision and order are denied and dismissed.

September 2, 2014

Date

Linda M. Valentini, Psy.D., CHO

Linda M. Valentini, Psy.D., CHO
Special Education Hearing Officer
NAHO Certified Hearing Official